

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, AT MUMBAI.

O.A.No.1183/1993

Dated this *Friday*, the 27th ^{August} day of 2004.

CORAM: HON'BLE SHRI A.K. AGARWAL, VICE CHAIRMAN
HON'BLE SHRI S.G. DESHMUKH, MEMBER (J)

Shri Narayan Kachroo Chowdhari
Residing at Kachroo,
Taluka Kalyan,
Dist. Thane. ... Applicant
(Applicant by Shri D.V.Gangal, Advocate)

vs.

The Union of India through

1. General Manager
Central Railway,
Bombay V.T.
2. The Divisional Electrical,
Engineer (Traction Rolling
Stock) Central Railway,
Kalyan.
3. The Asst. Electrical
Engineer (Traction Rolling
Stock) Central Railway,
Kalyan. Respondents
(Respondents by Shri S.C.Dhawan, Advocate)

O R D E R

[Per: S.G.Deshmukh, Member (J)]:

The present O.A. is filed for quashing and setting aside the Show Cause Notice dated 6.10.1993 proposing to impose penalty of dismissal from service, for a declaration that applicant has completed 36/31 years of qualifying service for the purpose of pension and other post retirement benefits and for a declaration that the applicant stands voluntarily retired with effect from 25.11.1992 and that he is entitled to be granted all pensionary and post retirement benefits and declaration that he is entitled to be granted full pay and allowances with effect from 3.10.1976 to 5.1.1991 and from 5.1.1991 to 25.11.1992.

2. The applicant's case is that he was appointed as a Khalasi on 5.7.1961 and promoted as Fitter on 16.4.1972. He was

arrested on 23.10.1976 and was convicted by the Sessions Judge on 26.5.1977. He was sentenced to suffer rigorous imprisonment of five years and fine of Rs.500/- which he under-went till October, 1980. He reported on duty in November, 1980. He was dismissed from service on 3.1.1981. He preferred an appeal on 29.1.1981 which was rejected on 21.5.1985. He filed a Writ Petition bearing No. 11454/85 in the High Court at Bombay which was decided by the C.A.T. by quashing the dismissal order vide order dated 6.4.1992 in Transfer Application. He submitted an application for voluntary retirement on 25.8.1992. The applicant has further stated that as per rules, he was due for voluntary retirement with effect from 25.11.1992. The respondents filed a review petition against the order of the C.A.T. which was disposed of on 16.10.1993. The impugned Show Cause Notice dated 6.10.1993 was received by him on 29.10.2003. It is contended that since 23rd October, 1996 till today he has not received a single paise from the Railway Administration either on account of wages, salary etc. He was not paid any Provident Fund, gratuity and other post dismissal benefits. He has voluntarily retired w.e.f. 25.11.1992. He is governed by Railway Pension Rules. He is entitled to seek voluntary retirement after completing 20 years of service as per Railway Pension Rules. He has completed more than 30 years of service and hence he is entitled to seek voluntary retirement. The respondents were at liberty to reject the voluntary retirement request but they have not chosen so. Hence he is deemed to have voluntarily retired with effect from 25.11.1992. It is contended that if an employee is voluntarily retired from the Railway Service there is no relationship of a

railway employee and railway administration. The applicant is a retired railway servant and hence cannot be issued any show cause notice under Rule 14 of the Railway Servants Discipline and Appeal Rules. The Railway Servants Discipline and Appeal Rules provides that these rules shall apply to Railway servants only. These rules do not apply to retired Railway servants. Rule 14 cannot be invoked in respect of a voluntarily retired Govt. Servant hence the show cause notice dated 6.10.1993 passed by the respondent is illegal. The applicant relied on O.A.1061/87 filed by Shri S.M.Mir vs. Central Railway. The impugned Show Cause Notice issued to the applicant is without jurisdiction and illegal. The date of birth of the applicant is 5.5.1939. It is contended that the respondents did not pass any deemed suspension order at any time from 1976 till 25.11.1992. The respondents did not take any President's sanction for initiation to proceedings under Rule 14 as the instant case relates to the year 1976, the President of India has no authority and power to grant permission in such cases which are more than 8 years old. It is contended under Railway Pension Rules every Railway servant has a right to voluntary retirement after having 20 years of qualifying service. There is a further provision any period which is falling short will be added by adding 5 years of service. The applicant rendered more than 30 years of service. The relevant portion of the Railway Pension Rules provides that voluntary retirement does not require any sanction unless it is rejected within 3 months. Hence this O.A.

3. The respondents contended that the application is bad for misjoinder of causes of action. It is also contended that the application does not disclose the cause of action as the show

Cause Notice 6.10.1993 was issued pursuant to the order and direction of the Tribunal passed in order dated 6.4.1992. The Tribunal has no jurisdiction to entertain the application against the Show Cause Notice. The applicant was absent from duty on and from 23.10.1976. He had informed the respondents by letter dated 13.11.1980 that he had been arrested on 23.10.1976 and convicted by the Magistrate. He had undergone the punishment and released on 21.10.1980. After learning about the applicant's conviction, the respondents by order dated 3.1.1981 under Rule 14 (2) of D.A.R. Rules passed the order of dismissal from service. The appeal filed by the applicant was rejected. The Writ filed by the applicant was transferred to the Tribunal which was disposed on 6.4.1992 by quashing the order of dismissal but left it open for the Disciplinary Authority to pass appropriate order after giving notice to the applicant. The respondents were directed to issue fresh Show Cause Notice. The respondents have filed the Review Petition No. 54/1993 which was disposed of as not pressed on 6.10.1993 for imposing the penalty of dismissal from service. It is contended that the applicant had worked only upto October, 1976 when he was arrested and subsequently convicted. He had put in only 15 years of service and therefore, was not entitled to submit the application for voluntary retirement. The applicant is not entitled for voluntary retirement as he was under DAR proceedings or proposed DAR proceedings. The applicant has been paid all his dues till the period the applicant has worked with the respondents. He had not worked after 23rd October, 1976. His settlement payment has been passed on 18.2.1985 and the pay order for amount of Rs.3444/- has been passed vide AAO, Kalyan's letter No.PF/Sett.10/ dated 18.2.1985. The respondents denied

that he had completed more than 35 years of service and he is entitled for voluntary retirement and he had retired w.e.f. 25.11.1992. It is contended that the respondents are entitled to invoke the Rule 14 (2) of Railway Servant's (D&A) Rules 1968. The ratio in the judgement in O.A. 1061/1987 is not applicable. The Tribunal had not directed that the applicant be reinstated but only held that it is open for the Disciplinary Authority to pass appropriate order after giving notice to the applicant which the respondents have done. The applicant is not entitled to receive salary for the period from 3.1.1981 to 25.11.1992. He was unauthorisedly absent from 23.10.1976 and he never informed the competent authority about his arrest and conviction till 13.11.1980.

4. The applicant filed the rejoinder and reiterated the contentions raised in the O.A.

5. Heard Shri D.V. Gangal, learned counsel for the applicant and Shri S.C.Dhawan, learned counsel for the respondents.

6. The learned counsel for the applicant submitted that as a condition of service, the applicant is entitled to seek retirement after completing 20 years. The applicant has completed more than 30 years of service. Hence he sought voluntary retirement. The respondents were at liberty to reject the voluntary retirement request but they had not chosen so. But applicant is deemed to have been voluntarily retired on 25.11.1992. The learned counsel for the applicant also submitted that after retirement there is no relationship between the railway employee and the railway administration. A retired Railway servant cannot be issued a Show Cause Notice under the Rule 14 of Railway Servant Discipline and Appeal Rules. He submitted that a voluntarily retired railway servant cannot be

dismissed. He has relied on the judgement in the case of *UDI and Ors. vs. Sayed Muzaffar MIR* 1995 SCC (L&S) 256.

7. On the other hand, the learned counsel for the respondents Shri S.C.Dhawan, submitted that the applicant was absent from duty from 23rd October, 1976. He was convicted by the Sessions Court under the section 304 (II) of Indian Penal Code and was sentenced to suffer R.I. for five years and to pay a fine of Rs.500/- and in default to suffer R.I. for three months. The applicant had informed the respondents about his arrest an conviction on 13.11.1980 and had requested that he may be paid his final settlement such as P.F. dues etc. The order of dismissal against the applicant has been set aside on a technical ground by the Tribunal in Transfer Order No. 503/87 by giving liberty to the Disciplinary Authority to pass an appropriate order after giving notice to the applicant. The learned counsel submitted that the Tribunal in its order has not directed that applicant be reinstated.

8. It is apparent from the above that the applicant was appointed as a Khalasi on 5.7.1961 and he was promoted as a Fitter on 16.4.1961. There is no dispute that the applicant was arrested on 23.10.1976 and was convicted by the Sessions Court under sec. 304 (II) of IPC and was sentenced to under go R.I. for 5 years and to pay a fine of Rs.5000 and in default to further undergo imprisonment for three months which he underwent till October, 1980. According to the applicant he returned on duty in November, 1980. But from the letter brought on record by the respondents at R.I. it reveals that he had informed about his arrest and conviction to the railway authorities on 13.11.1980 and requested to grant him Provident Fund amount and CDS instalment, gratuity etc. The said letter is under the

signature of applicant as an "Ex-Head Fitter" at R.1. From this letter it appears that the applicant was not in service as he had mentioned himself as an Ex-Head Fitter. There is no dispute that the applicant was dismissed from service by order dated 3.1.1981 under Rule 14 (2) of DAR Rules. The appeal filed by the applicant for setting aside the dismissal was rejected on 21.5.1985. The applicant had filed the Writ Petition on 24.6.1985 which was transferred to the C.A.T. Bombay Bench. It is true that on 6.4.1992 the CAT. Bombay Bench quashed the dismissal order dated 3.1.1981 and the appellate order dated 21.5.1985 with liberty to the disciplinary authority to pass an appropriate order after giving notice to the applicant. It appears that after this order the applicant was not reinstated in service. There is no order of reinstatement of the applicant by the Tribunal. The applicant was within the right to get himself reinstated because of the CAT order. It appears that the applicant did not get executed the right in question by approaching the respondents for joining the duties.

9. It is not disputed that the applicant was dismissed from service from 3.1.1981. The dismissal was set aside by the order dated 6.4.1992 of the C.A.T. The fact remains that the applicant was not in service from 3.1.1981 to 6.4.1992 and thereafter also the applicant did not approach to get himself reinstated in the service. So despite the right given to the applicant in this regard the same is of no avail as the right had not come to be exercised. The relationship of Master and servant in between respondents and the applicant had come to an end on dismissal of the applicant from service. Mere setting aside the order of dismissal without getting reinstated, the relationship of

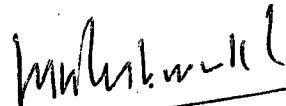
master and servant will not automatically come into existence. According to the applicant he sent the notice of voluntary retirement on 25.9.1992 when he had not joined services. We have mentioned that the dual relationship of employee and employer had not got revived as the applicant was not reinstated in the service. The severance of master servant relationship was in existence when the applicant was said to have submitted his application for voluntary retirement. The Railway Servants Discipline and Appeal Rules were not applicable to him as he was not in service. As the dual relationship between the applicant and the respondents had come to an end, submitting the notice of voluntary retirement by the applicant is of no avail. The applicant ought to have got reinstated for submitting voluntary retirement. When relationship of master and servant was not there non passing of order by respondents on the so called voluntary retirement notice will not give any right to the applicant. Notice of voluntary retirement is non-existent in the eye of law.

10. We have mentioned that there is nothing to show that the applicant was reinstated in service after quashing and setting aside of the order of dismissal. There is no question of regularising the period between dismissal and reinstatement as duty or leave by the order of the competent authority.

11. We have considered the ratio laid down in the case of *UOI and Ors. vs. Sayed Muzaffar* MIR 1995 SCC (L&G) 256 and in our considered view, the same is not helpful to the applicant as the

facts in the present case differ from those of cited case. In Sayed Muzaffar (supra)'s case respondents had given three months notice to the Railways to retire on 22.7.1985. The period of three months had expired on 21.10.1985 and the order of removal was based on 4.11.1985 and thus the order of removal was treated as honest in the eye of law. In the instant case, the applicant was already dismissed from the service and the notice of voluntary retirement was given to the Railways without getting himself reinstated in the service when there was no relationship of master and servant between the authorities and the applicant.

12. In view of the above discussion, the we hold that the O.A. is devoid of any merit and the same is accordingly, dismissed. The Interim Stay granted vide order dated 24.10.1994 stands vacated. No order as to costs.



(S.G. Deshmukh)

Member (J)



(A.K. Agarwal)

Vice Chairman

sj*

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, AT MUMBAI.

R.P.No.83/2004
in
O.A.No.1183/1993

CORAM: HON'BLE SHRI A.K. AGARWAL, VICE CHAIRMAN
HON'BLE SHRI S.G.DESHMUKH, MEMBER (J)

Shri Narayan Kachroo Chowdhari ... Petitioner
(By Shri D.V. Gangal, Advocate)

vs.

Union of India & 2 Others ... Respondents
(By Shri S.C. Dhawan, Advocate)

ORDER BY CIRCULATION IN R.P.No.83/2004 DATED 18/11/2004.

Per: S.G.Deshmukh, Member (J):

The present Review Petition is filed by the applicant for reviewing the order of the Tribunal dated 27.8.2004 passed in O.A.No.1183/1993.

2. The applicant had filed the O.A. for quashing and setting aside the Show Cause Notice dated 6.10.1993 proposing to impose the penalty of dismissal from service, for a declaration that applicant has completed 36/31 years of qualifying service for the purpose of pension and other post retirement benefits and for a declaration that the applicant stands voluntarily retired with effect from 25.11.1992 and that he is entitled to be granted all pensionary and post retirement benefits and declaration that he is entitled to be granted full pay and allowances with effect from 3.10.1976 to 5.1.1991 and from 5.1.1991 to 25.11.1992.

3. The Tribunal has dismissed the O.A. by its order dated 27.8.2004. The applicant sought review of the order in question stating that once a dismissal order is set aside, the employee is required to be reinstated in view of Rule 5, Sub Rule 4 of the Railway Servants (Disciplinary & Appeal) Rules, 1968. It is also contended that it is common knowledge that unless and until an

employee is in service, he will not be issued a notice for dismissal from service. It is also tried to contend that on setting aside of the dismissal order, reinstatement is the consequence and there is no question of execution of reinstatement. The applicant relies on the judgement of the Apex Court in the case of *A.P.SRTC vs. B.Vikram Reddy 2004 SCC (L&S)*

83 .

4. We have considered the R.P. and contentions raised on behalf of the applicant. In *Ajit Kumar Rath vs. State of Orissa & Others 1999 (9) Supreme 3211*, it has been observed by their Lordships that "the power available to Tribunal is same as available to a Court under Section 114 read with Order 47 of CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the fact of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error or law or fact which stares in the face without any elaborate argument being needed for establishing it."

5. It is apparent that the review cannot be granted on the ground that the decision is erroneous on merit. The error which is not self evidence and has to be detected by reasoning, can

hardly be said as an error apparent on the face of the record justifying the Court to exercise the power of its review. The review does not necessarily reopen the questions already decided between the parties. The erroneous view of evidence or law is no ground for review though it may be a ground for appeal.

6. It also to be mentioned that in *B. Vikram Reddy's* case (supra) relied on by the applicant, the Labour Court's award was of reinstatement of respondent in appellant's service. The respondent was not reinstated in spite of award passed. In the instant case no such award of reinstatement was passed but only the removal was set aside. We have mentioned that the erroneous view of evidence or law is no ground for review. No review can be asked for on the ground of discovery of new authorities which show that the decision is incorrect.

7. In view of the above discussion, the R.P. deserves to be rejected being devoid of any merits. We order accordingly. No order as to costs.

M.G.Deshmukh
(S.G. Deshmukh)

Member (J)

Sj*

A.K. Agarwal
(A.K. Agarwal)
Vice Chairman

order issued
on 11/12/04
[Signature]